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PATENT COOPERATION TREATY 14 MAR 2005



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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference PCT 21229Y-1		FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/US 03/36806	International filing date (day/month/year) 18.11.2003	Priority date (day/month/year) 22.11.2002	
International Patent Classification (IPC) or both national classification and IPC C07D471/04			
Applicant MERCK & CO., INC. et al.			
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of sheets.</p>			
<p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the opinion</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p>IV <input checked="" type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p>			
Date of submission of the demand 07.06.2004		Date of completion of this report 11.03.2005	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Schmid, A Telephone No. +49 89 2399-8591 	

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/US 03/36806

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-136 as originally filed

Claims, Numbers

1-18 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

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IV. Lack of unity of invention

1. In response to the invitation to restrict or pay additional fees, the applicant has:

- ☐ restricted the claims.
- ☒ paid additional fees.
- ☐ paid additional fees under protest.
- ☐ neither restricted nor paid additional fees.

2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is

- ☐ complied with.
- ☐ not complied with for the following reasons:

4. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this report:

- ☒ all parts.
- ☐ the parts relating to claims Nos. .

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-18
	No: Claims	
Inventive step (IS)	Yes: Claims	1-15
	No: Claims	16-18
Industrial applicability (IA)	Yes: Claims	1-18
	No: Claims	

2. Citations and explanations

see separate sheet

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invention 1: claims 1-15

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

- 1) The searched reaction starting from compound Va leading to compounds VIII and VIIla is not disclosed in the prior art especially with regard to the use of a palladium catalyst in the presence of a phosphine ligand in an amine base (cf. the reaction principle as disclosed in D1 and D2)

Accordingly the present process is novel over the prior art pursuant to Article 33(2) PCT.

- 2) Contrary to the reaction principles as disclosed in the prior art, no copper is used and the used Pd-catalyst requires no special handling. The present catalyst are prepared in situ from stable palladium and phosphine sources thereby providing good ligand/palladium ratio's which are generally difficult to access. On the other hand the dimer production of compound Va as argued by the applicant can be avoided.

Therefore the subject-matter of present claims 1-15 involves an inventive step with regard to Article 33(3) PCT.

invention 2: claims 16-18

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

- 1) The applicant has claimed a purification process characterised by recrystallisation step with useful solvents which have been characterised in claim 17.

However, the fact that a chemical compound can be purified by recrystallisation is

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obvious for a chemist if not already for a student in chemistry and will be carried out by routine.

However, in order to support these arguments, the document DE-A-25 50 111 has been cited where compounds, similar to the present ones, have been recrystallized by the exactly the same solvents as specified in claim 17.

Accordingly, the subject-matter of present claims 16-18 is formally novel pursuant to Article 33(2) PCT but does not involve an inventive step with regard to Article 33(3) PCT.

- 2) DE-A-25 50 111 which represents a relevant prior art should be referred to in the description in accordance to Rule 5(1)(a)(ii) PCT.